

Message Text

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PAGE 01 BUENOS 07099 01 OF 02 112111Z

ACTION ARA-15

INFO OCT-01 EUR-12 ISO-00 IO-13 DLOS-09 CIAE-00 PM-05

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FM AMEMBASSY BUENOS AIRES

TO SECSTATE WASHDC 7399

INFO AMEMBASSY SANTIAGO

AMEMBASSY BRASILIA

AMEMBASSY LIMA

AMEMBASSY LONDON

AMEMBASSY THE HAGUE

USCINCSO QUARRY HTS CZ

DIA WASHDC

C O N F I D E N T I A L SECTION 1 OF 2 BUENOS AIRES 7099

E.O. 11652: GDS

TAGS: PBOR AR CI

SUBJ: ARGENTINE LEGAL ARGUMENTS IN BEAGLE DISPUTE

REF: A) BUENOS AIRES 7069, B) SANTIAGO 6720

SUMMARY: ARGENTINES APPEAR CONVINCED THEY HAVE ACTED
WITHIN THEIR LEGAL RIGHTS TO REJECT THE ARBITRATION
AWARD. THEIR MAIN PROBLEM WITH THE AWARD APPEARS TO
BE NOT THE ATTRIBUTION OF LENNOX, PICTON AND NUEVA TO
CHILE, BUT RATHER THE FINDINGS ON NON-HAMMER ISSUES
MADE BY THE COURT AS IT WORKED ITS WAY TOWARDS A
CONCLUSION. AS LONG AS THE TWO COUNTRIES HAVE AGREED
TO BILATERAL NEGOTIATIONS TO SORT OUT THEIR DIFFERENCES
AND WHILE LEGAL GREY AREAS EXIST, WE SEE NO REASON TO
CHANGE US POLICY FROM ENCOURAGING A PEACEFUL BILATERAL
NEGOTIATED SOLUTION TO TAKING SIDES IN THE DISPUTE.
END SUMMARY.

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PAGE 02 BUENOS 07099 01 OF 02 112111Z

1. IN REJECTING THE ARBITRATION AWARD, THE ARGENTINES
APPEAR CONVINCED THAT THEY DID INDEED TAKE APPROPRIATE
LEGAL STEPS AVAILABLE TO THEM. THE JANUARY 25 DECLARA-
TION OF "NULLIFICATION" AND ACCOMPANYING AIDE MEMOIRE
EXPRESSLY REFER TO THE ARBITRATION TREATY OF 1902 AND
THE "COMPROMISO" OF 1971 AS REQUIRING THAT THE "AWARD

MUST BE DECIDED ON THE PRINCIPLES OF INTERNATIONAL LAW (ART. VII OF THE 1902 TREATY AND ART. I, OF THE COMPROMISO)". THE "NULLIFICATION" DOCUMENTS GO ON TO LIST SIX CATEGORIES OF ERRORS AND DEFECTS IN THE RULING "IN VIOLATION OF INTERNATIONAL NORMS" ON WHICH ARGENTINA BASES ITS RIGHT TO REJECT THE COURT'S FINDINGS. REFTEL A PROVIDES THE MOST RECENT PUBLIC ARGENTINE REVIEW OF ITS LEGAL RIGHT TO AVOID THE RULING, NEGOTIATE A BILATERAL SETTLEMENT IN THE DISPUTED AREA (PARTICULARLY OUTSIDE THE HAMMER), AND REFUSE TO SUBMIT THE DISPUTE TO THE INTERNATIONAL COURT FOR FURTHER ADJUDICATION.

2. THE ARGENTINES, ACCORDING TO OUR INFORMATION, ARE WILLING TO CONCEDE THE LOSS OF NUEVA, PICTON AND LENNOX TO CHILE AS DETERMINED IN THE AWARD. WHAT CONCERNS THEM IS THAT THE EFFECTS OF THE RULING, IF EXTENDED ACCORDING TO A PARTICULAR SET OF LOGICAL PRINCIPLES IN INTERNATIONAL LAW, WILL HAVE THE EFFECT OF OVERTURNING OTHER OLDER PRECEPTS WHICH HAVE GUIDED ARGENTINA-CHILEAN RELATIONS: SPECIFICALLY, THE PRECEPT OF DIVISION OF TERRITORIAL CLAIMS BY OCEAN, A PRINCIPLE WHICH HAS MAJOR IMPORTANCE IN ARGENTINE ATTITUDE AND HISTORY.

3. ARGENTINA'S NEED TO REJECT THE RULING APPEARS TO
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PAGE 03 BUENOS 07099 01 OF 02 112111Z

US TO BE BASED NOT SO MUCH ON ITS FINAL CONCLUSION-- THAT LENNOX, PICTON AND NUEVA ARE CHILEAN--BUT THE COURT'S FINDINGS ON OTHER NON-HAMMER ISSUES WHICH ARE, IN THE VIEW HERE, UNSOLICITED OPINIONS WHICH ARGENTINA FINDS UNACCEPTABLE. THESE INCLUDE THE COURT'S EFFECTIVE DENIAL OF THE OCEANIC PRINCIPLE AND ITS INTERPRETATION OF THE VIEWS OF THE 1881 TREATY FRAMERS TO THE EFFECT THAT ARGENTINA WAS GAINING THE WHOLE OF PATAGONIA IN EXCHANGE FOR THE ENTIRE AREA SOUTH OF THE MAGELLAN STRAITS (SAVE THE HALF OF ISLA GRANDE SPECIFICALLY AWARDED TO ARGENTINA). THE AWARD ALSO--FOR OTHER REASONS--EFFECTIVELY DENIES THE "DRY COAST" CONCEPT AND DECLARES THAT "WITHOUT AN EXPRESS PROVISION TO THE CONTRARY, AN ATTRIBUTION OF TERRITORY MUST IPSO FACTO CARRY WITH IT THE WATERS APPURTENANT TO THE TERRITORY" (PARAGRAPH 107). OUR CONJECTURE IS THAT IN ARGENTINA'S VIEW, IF SHE WERE TO ACCEPT THE RULING-- EVEN STRICTLY LIMITED TO THE HAMMER AREA--SHE WOULD IN EFFECT BERACQUIESCING IN THE ENTIRE REASONING OF THE COURT WHICH WOULD IRRETRIEVABLY COST HER ALL CLAIMS SOUTH OF THE HAMMER AND EAST OF CAPE HORN.

HAVING BASED HER ANTARCTICA, AND TERRITORIAL CLAIMS
ON A CAPE HORN DIVISION, ARGENTINA CANNOT LET GO OF
THE PRINCIPLE OF THE OCEANIC DIVIDE.

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PAGE 01 BUENOS 07099 02 OF 02 112130Z
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C O N F I D E N T I A L SECTION 2 OF 2 BUENOS AIRES 7099

4. THE FEELING HERE IS THAT ARGENTINA'S LEGAL CLAIMS
ARE WEAK. WE ARE NOT INTERNATIONAL LAWYERS AND CANNOT
DISPUTE OR UPHOLD ARGENTINA'S ARGUMENTS. WE UNDER-
STAND THAT NEITHER THE BRITISH (THE MOST LIKELY PARTY
AS THE LEGAL ARBITRATOR OF THE DISPUTE) NOR THE
GERMAN GOVERNMENT HAVE PREPARED A LEGAL OPINION ON
ARGENTINA'S POSITION (AS EFFECTS THE SOUTH-OF-THE-
HAMMER DISPUTED AREA), NOR HAVE THOSE GOVERNMENTS
ELECTED TO TAKE A SIDE IN THE DISPUTE AT THIS STAGE.
THE PRESS SEPTEMBER 11 QUOTED THE BRAZILIAN FOREIGN
MINISTRY SPOKESMAN AS SAYING BRAZIL WILL NOT TAKE
SIDES IN THE CHILE-ARGENTINE DISPUTE. BRAZIL HAS
NOTHING TO DO WITH THE PROBLEMS OF THE CHANNEL AND
THE LENNOX, PICTON AND NUEVA ISLANDS AND BELIEVES
THAT THE TERRITORIAL DISPUTE SHOULD BE RESOLVED
BETWEEN THE TWO PARTIES WITHOUT THE INTERFERENCE
OF OTHER NATIONS, SAID THE SPOKESMAN.

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PAGE 02 BUENOS 07099 02 OF 02 112130Z

5. THE POINT IS THAT THE ARGENTINES HAVE THEIR LEGAL ARGUMENTS, EVEN IF THEY THEMSELVES DESPAIR OF THEIR EFFICACIOUSNESS. THE CONSUMMATELY LEGALISTIC ARGENTINES ARE NOT UNILATERALLY THROWING OVER LEGAL FORMS. BUT, WHERE THEY SEE LEGALITY, TEXTS, AND INTERPRETATION MILITATING AGAINST THEM THE ARGENTINES TURN TO THE HISTORICAL METHOD OF RESOLVING DISPUTES BY INTRODUCING POLITICAL PRESSURES TO EFFECT A POLITICAL SOLUTION.

6. UP TO NOW, THE US POSITION HAS BEEN TO PROMOTE THE PEACEFUL RESOLUTION OF DISPUTES AND TO ENCOURAGE PUBLICLY A PEACEFUL BILATERAL SOLUTION TO THE BEAGLE DISPUTE. IN THE BEAGLE MATTER, WE FEEL THAT THERE IS ENOUGH GREY AREA FOR US MORE APPROPRIATELY TO MAINTAIN AN OBJECTIVE STANCE AND TO CONTINUE TO URGE A PEACEFUL BILATERAL SOLUTION. ARGENTINA IS, WE FEEL, TRYING DESPERATELY TO FIND A WAY OUT OF THE BEAGLE DILEMMA SHORT OF WAR. A SUGGESTION CHANGE IN US POLICY WHILE BILATERAL NEGOTIATIONS ARE ONGOING, WHICH, DESPITE ITS LOFTY INTENT, WILL ONLY BE VIEWED AS FAVORITISM MAY WORK AGAINST ARGENTINA'S OWN MIXED EMOTIONS ON HOW TO PROCEED.
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